

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 4:20 CR 174 SEP
)
DELOE ANTONIO BARNER,)
)
Defendant.)

**GOVERNMENT'S RESPONSE TO DEFENDANT'S
OBJECTIONS TO THE PRESENTENCE REPORT**

Comes now the United States of America, by and through its attorneys, Sayler A. Fleming, United States Attorney for the Eastern District of Missouri, and Matthew T. Drake, Assistant United States Attorney for said District, and for its response to Defendant's Objection to the Presentence Report Sentencing states as follows:

The United States received Defendant's Objection to the Presentence Report (DCD #58) filed on August 11, 2022, and Defendant's Sentencing Memorandum (DCD #59) filed on August 12, 2022. In his objections to the Presentence report, Defendant challenged paragraph 39 which states: “[a]ccording to the Inspector General, Department of Defense, Barner, as J.S. has a criminal history in Germany that includes bodily harm, trespassing, resistance to enforcement officers, violation of support obligations, and insult. Further information was not provided.” Defendant also challenges paragraph 89, of the report which cites to § 4A1.3 of the United States Sentencing Guidelines, suggesting that there is “reliable information” forming the basis for a potential upward departure that Mr. Barner’s criminal history category substantially under-represents the seriousness of his criminal history or likelihood that he will commit other crimes.

The United States asserts that the Presentence Report is accurate according to information gathered in the underlying investigation of this matter. During the investigation, the Inspector General of the Department of Defense received information from the German government that the Defendant, using his assumed identity of J.S. had “the following criminal records within the past ten years: bodily harm, trespassing, resistance to enforcement officers, violation of support obligations, insult.” This information was provided in discovery and is reflected in Exhibit A. The information came from an email dated March 8, 2019, written in German and later translated into English. The email is also reflected in Exhibit A. Inasmuch, the United States believes that the assertions contained in the Presentence report accurately reflect the information that was provided to investigators.

The United States submits the Court should afford whatever weight, and consideration of this information that the Court deems appropriate. Notably, the United States is neither arguing for, nor requesting, that this or other information known to the Government warrants an upward variance or departure in this case.

Respectfully submitted,

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United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2022, the foregoing was filed electronically with the Clerk of the Court, under seal, and was served by electronic mail upon defense counsel.

/s/ Matthew T. Drake

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